

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Emmett Buffman,

Plaintiff,

Case No. 13-cv-14024

Hon. Judith E. Levy

v.

Mag. Judge Mona K. Majzoub

United States of America,

Defendant.

**ORDER ADOPTING [57] REPORT AND RECOMMENDATION
AND DENYING DEFENDANT'S [43] MOTION TO DISMISS**

This matter is before the Court on Magistrate Judge Mona K. Majzoub's Report and Recommendation (Dkt. 57), issued on February 12, 2015, in which the Magistrate Judge recommends the Court deny without prejudice defendant United States of America's Motion to Dismiss or, in the alternative, for Summary Judgment (Dkt. 43).

The basis for the recommendation is that the issue of whether plaintiff's allegations satisfy the elements of a medical malpractice claim under Michigan law is properly resolved on a motion for summary judgment, not a motion to dismiss. (Dkt. 57 at 7.) And since plaintiff

has sought to conduct discovery in this matter, but has not been able to do so, it would be premature to grant summary judgment. (*Id.*) The Magistrate Judge further notes that she has granted plaintiff's Motion to Appoint Counsel and stayed this matter pending the outcome of referral to the Court's Pro Bono Committee. (*Id.*)

Plaintiff has not filed objections to the Report and Recommendation, and the time for doing so has expired. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). Defendant was granted an extension of time in which to file objections until March 26, 2015. (Dkt. 59.) Defendant has not filed objections. The failure to object relieves this Court from its duty to review this matter independently. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The Court has nonetheless thoroughly reviewed the Report and Recommendation, defendant's Motion to Dismiss or, in the alternative, for Summary Judgment, plaintiff's Response, defendant's Reply, and the record as a whole, and agrees with the findings and conclusions of the magistrate judge.

Accordingly, the Magistrate Judge's Report and Recommendation (Dkt. 57) is ADOPTED; and

Defendant's Motion to Dismiss or, in the alternative, for Summary Judgment (Dkt. 43) is DENIED without prejudice.

IT IS SO ORDERED.

Dated: March 27, 2015
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 27, 2015.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager